A **LIM KIEN SENG & ANOR v. TETUAN K MANO & ASSOCIATES**

COURT OF APPEAL, PUTRAJAYA
HAMID SULTAN ABU BACKER JCA
BADARIAH SAHAMID JCA
MARY LIM JCA
B [CIVIL APPEAL NO: W-02(A)-1322-07-2017]
30 MAY 2019

LIMITATION: *Accrual of cause of action – Claim – Claim for legal fees by solicitor – Solicitor appointed through letters of appointment – Contractual terms in letters* C *that solicitors would be paid fees for legal work of representing clients – Termination of solicitor's services – Whether claim for fees time-barred – Whether claim founded on contract – Date cause of action accrued – Whether claim statute-barred – Limitation Act 1953, s. 6*

D ***LEGAL PROFESSION:*** *Solicitor – Fees – Application to tax bills of costs on solicitor-client basis – Claim for legal fees – Solicitor appointed through letters of appointment – Contractual terms in letters that solicitors would be paid fees for legal work of representing clients – Termination of solicitor's services – Whether claim for fees time-barred – Whether claim founded on contract – Accrual of cause of action – Whether limitation had set in – Limitation Act 1953, s. 6 – Legal* E *Profession Act 1976, s. 126*

Via two letters of appointment issued in 2005, the respondent was retained by the appellants to act for (i) the company in legal proceedings instituted by or against various third parties; and (ii) their personal capacity in several suits. The contractual term in the said two letters was that the respondent F would be paid legal fees for the legal work of representing the appellants in the legal proceedings. The appellants later discharged the respondent with immediate effect. During the termination, there were outstanding legal fees which the respondent claimed the appellants agreed to pay under the letters of appointment. The respondent issued a summary of bills but the appellants G requested for detailed bills. The respondent complied and provided *pro forma* invoices for their legal fees, costs and expenses incurred till the date of termination of services. The appellants disputed the principle and quantum of costs charged by the respondent and sought the respondent's consent to have the bills taxed under s. 126(3) of the Legal Profession Act 1976 ('LPA'). H Under s. 126(3) of the LPA, consent negated the necessity of obtaining an order of court for the purpose of taxation conducted by the Registrar of the High Court. This was specifically mentioned in the appellants' letter. The respondent filed an originating summons, at the High Court, against the company and the appellants, seeking an order under ss. 124, 125 and 126 of I the LPA that his bill of costs be taxed on a solicitor-client basis for the cases

listed, at the behest of the appellants. Opposing the respondent's claim for his fees, the appellants argued that (i) the claim was time-barred under s. 6 of the Limitation Act 1953 ('the Act'); and (ii) the last date for the case handled was 23 October 2010. Since limitation runs six years from the date of cause of action, that six-year period must run from the last concluded date of 23 October 2010 in which case limitation had set in on 22 October 2016. As the OS was filed on 21 November 2016, the application was statute-barred and must be dismissed. The High Court Judge ('HCJ'), however, did not find the claim was statute-barred under s. 6 of the Act. According to the HCJ, (i) the underlying relationship between the respondent and the appellants was contractual, governed by the letters of appointment; and (ii) the cause of action accrued from the breach of contract, namely the termination of the contract without full payment of the respondent's professional fees. Hence, the present appeal.

Held (dismissing appeal with costs)
Per Mary Lim JCA delivering the judgment of the court:

(1) The underlying relationship between the parties was necessarily contractual for the rendering of professional legal services. The two letters of appointment, issued by the appellants in 2005, clearly confirmed this understanding with the appellants standing as guarantors to the promise to pay for the legal fees, disbursements and costs incurred in representing, not only the company, but also the appellants themselves. More pertinent was the promise to pay and a guarantee of payment for such fees and costs disposal of all the aforesaid matters and/or disposal of the assets of the company, which ever was earlier, under the first letter of appointment. In both cases, this promise and guarantee stood, notwithstanding the pre-determination of the respondent's services, by the appellants. (paras 19-20)

(2) There was no evidence as to the status of either the disposal of the matters or the disposal of other matters related to the issues in the identified legal proceedings, the appellants' assertion that time had set in simply could not hold. In fact, there was evidence to the contrary showing that there were not only matters pending but that the respondent was instructed to act for the appellants in far more matters than those originally listed in the letter of appointment. (para 23)

(3) Since the parties had agreed that the legal fees and costs to be paid to the respondent 'shall be the sum equivalent to 15% of the total value of our collective individual entitlement of 1/8 shares as beneficiaries from the estate of our late father … and late mother …', such fees and costs will obviously be dependent on the disposal of the assets of the parents' estate. There was no evidence of such disposal. (para 27)

(4) Time, for the purpose of the Act, ran only from the date when the appellants asked for detailed bills of costs to be taxed, which was on 2 April 2012. Under such circumstances, the OS was not time-barred. The appellants argued that since the respondent had delivered the bills on 16 March 2012, the application filed on 21 November 2016 was time-barred by virtue of s. 126(1) of the LPA. Section 126(1) of the LPA applies where parties could not agree to the amount(s) billed. Where there is consent, s. 126(3) of the LPA provides that the Registrar then just proceeds to tax the bill even though there was no order to that effect. Since the appellants have themselves agreed to taxation of the bills under s. 126(3), they are now estopped from resiling from that position, objecting to the respondent's application by insisting that s. 126(1) of the LPA applied and that the OS was time-barred. (paras 29, 32, 34 & 35)

Bahasa Malaysia *Headnotes*

Melalui dua surat pelantikan yang dikeluarkan pada 2005, responden dilantik untuk bertindak mewakili (i) syarikat dalam prosiding guaman yang dimulakan oleh atau terhadap pihak-pihak ketiga; dan (ii) kapasiti peribadi mereka dalam beberapa guaman. Terma kontraktual dalam kedua-dua surat tersebut memperuntukkan responden akan dibayar yuran guaman untuk kerja-kerja mewakili perayu-perayu dalam prosiding guaman. Perayu-perayu kemudian menamatkan perkhidmatan responden serta merta. Semasa penamatan perkhidmatan, terdapat tunggakan yuran guaman yang responden dakwa perayu-perayu bersetuju untuk bayar bawah surat-surat pelantikan. Responden mengeluarkan ringkasan bil tetapi perayu-perayu meminta bil terperinci. Responden mematuhinya dan mengemukakan invois *pro forma* untuk yuran guaman, kos dan perbelanjaan yang dikeluarkan hingga tarikh penamatan perkhidmatan. Perayu-perayu mempertikaikan prinsip dan kuantum kos yang dikenakan oleh responden dan meminta kebenaran responden untuk mengenakan cukai pada bil bawah s. 126(3) Akta Profesyen Guaman 1976 ('APG'). Bawah s. 126(3), kebenaran menidakkan keperluan mendapatkan satu perintah mahkamah untuk tujuan taksiran cukai oleh Pendaftar Mahkamah Tinggi. Ini dinyatakan secara khusus dalam surat perayu-perayu. Responden memfailkan saman pemula ('SP'), di Mahkamah Tinggi, terhadap syarikat dan perayu-perayu, memohon perintah bawah ss. 124, 125 dan 126 APG bahawa bil kosnya dikenakan cukai atas dasar peguam cara-anak guam untuk kes-kes yang disenaraikan, atas perintah perayu-perayu. Membantah tuntutan responden-responden untuk yurannya, perayu-perayu menghujahkan (i) tuntutan tersebut terhalang oleh had masa bawah s. 6 Akta Had Masa 1953; dan (ii) tarikh terakhir kes yang dikendalikan ialah 23 Oktober 2016. Oleh kerana had masa terakru enam tahun dari tarikh kausa tindakan, tempoh enam tahun ini mesti berjalan dari tarikh terakhir, iaitu 23 Oktober 2010 dan had masa jatuh pada 22 Oktober

2016. Oleh kerana SP difailkan pada 21 November 2016, permohonan tersebut terhalang oleh had masa dan mesti ditolak. Hakim Mahkamah Tinggi ('HMT') tidak mendapati tuntutan tersebut terhalang oleh had masa bawah s. 6 Akta. Menurut HMT (i) hubungan asas antara responden dan perayu-perayu bersifat kontraktual, dikawal oleh surat-surat pelantikan; dan (ii) kausa tindakan terakru susulan pelanggaran kontrak, iaitu penamatan kontrak tanpa bayaran penuh yuran profesional responden. Maka, timbul rayuan ini.

Diputuskan (menolak rayuan dengan kos)
Oleh Mary Lim HMR menyampaikan penghakiman mahkamah:

(1) Hubungan asas antara pihak-pihak sememangnya kontraktual untuk memberi perkhidmatan profesional guaman. Kedua-dua surat pelantikan, yang dikeluarkan oleh perayu-perayu pada 2005, jelas mengesahkan kesefahaman ini dengan perayu-perayu bertindak sebagai penjamin yang menjamin bayaran yuran guaman, bayaran dan kos yang dikeluarkan apabila mewakili, bukan sahaja syarikat, tetapi juga perayu-perayu sendiri. Lebih penting lagi, janji untuk membayar dan satu jaminan bayaran yuran dan kos pelupusan semua hal perkara yang disebut di atas dan/atau pelupusan aset-aset syarikat, yang mana lebih awal bawah surat pelantikan pertama. Dalam kedua-dua kes, janji dan jaminan oleh perayu-perayu kekal tanpa mengira perkhidmatan responden yang ditetapkan terlebih dahulu.

(2) Tiada keterangan tentang status sama ada pelupusan hal perkara-hal perkara atau pelupusan lain-lain hal perkara berkaitan isu dalam prosiding guaman yang dikenal pasti, tegasan perayu-perayu bahawa masa sudah terakru tidak boleh dikekalkan. Malah, terdapat keterangan sebaliknya yang menunjukkan bukan sahaja terdapat hal perkara-hal perkara yang masih belum selesai bahkan responden diarahkan bertindak untuk perayu-perayu dalam hal perkara-hal perkara yang lebih banyak berbanding yang asalnya disenaraikan dalam surat pelantikan.

(3) Oleh kerana pihak-pihak bersetuju agar yuran dan kos guaman dibayar kepada responden 'shall be the sum equivalent to 15% of the total value of our collective individual entitlement of 1/8 shares as beneficiaries from the estate of our late father … and late mother …', yuran dan kos sedemikian nyata bergantung pada pelupusan aset-aset hartanah ibu bapa tersebut. Tiada keterangan tentang pelupusan sedemikian.

(4) Masa, bagi maksud Akta, hanya bermula pada tarikh apabila perayu-perayu meminta bil kos terperinci dikenakan cukai, iaitu pada 2 April 2012. Berdasarkan hal-hal keadaan sedemikian, SP tidak terhalang oleh had masa. Perayu-perayu menghujahkan, oleh kerana responden menyerahkan bil pada 16 Mac 2012, permohonan yang difailkan pada

21 November 2016 terhalang oleh had masa bawah s. 126(1) APG. Seksyen 126(1) APG terpakai apabila pihak-pihak tidak boleh bersetuju dengan jumlah yang dibilkan. Apabila terdapat kebenaran, s. 126(3) APH memperuntukkan agar Pendaftar terus mentaksir bil jika pun tiada perintah sedemikian. Oleh kerana perayu-perayu sendiri bersetuju agar bil dikenakan cukai bawah s. 126(3), mereka kini diestop daripada mengabaikan kedudukan tersebut, membantah permohonan responden dengan menegaskan s. 126(1) APG terpakai dan SP terhalang oleh had masa.

Case(s) referred to:

Abbas & Ngan v. Affin Bank Bhd [2010] 1 LNS 1082 HC ***(dist)***
Coburn v. Colledge [1897] QB 702 ***(refd)***
Gurubarchan Singh Bagawan Singh & Ors v. Vellasamy Pennusamy & Other Appeals [2015] 1 CLJ 719 FC ***(refd)***
Lai Yoke Ngan & Anor v. Chin Teck Kwee & Anor [1997] 3 CLJ 305 FC ***(refd)***
Nasri v. Mesah [1970] 1 LNS 85 FC ***(refd)***
Phillips & Co v. Bath Housing Co-Op Ltd [2013] 2 All ER 475 ***(refd)***
Preston v. Nikolaidis [2017] NSWSC 1527 ***(dist)***

Legislation referred to:

Legal Profession Act 1976, ss. 124, 125, 126(1), (3)
Limitation Act 1953, ss. 6, 14, 26
Limitation Act 1969 [NSW], ss. 14, 63

For the appellants - Sandosh Anandan, Sonia Deva Doss & Marcelle Sinnappa; M/s Culaz & Assocs
For the respondent - Anantha Krishnan, Shailender Bhar & K Manoharan; M/s K Mano & Assocs

[Editor's note: For the High Court judgment, please see Tetuan K Mano & Associates v. Lim Kien Seng & Ors [2018] 6 CLJ 124 (affirmed).]

Reported by Najib Tamby

JUDGMENT

Mary Lim JCA:

[1] The respondent, a firm of advocates and solicitors, were previously instructed by the appellants. Upon cessation of instruction, the respondent sought an order of court for a taxation of their fees on a solicitor and client basis pursuant to s. 126 of the Legal Profession Act 1976. The order was duly granted. The clients appealed. On appeal, we did not find any error in the reasoning of the learned judge. Consequently, we dismissed the appeal and affirmed the decision of the High Court. These are our reasons in full.

[2] The respondent was retained by a company known as Patent View Development Sdn Bhd (Patent View) to act for the company in legal proceedings instituted by or against various third parties. The letter of appointment was signed by the appellants who were directors of Patent View.

The directors themselves also appointed the respondent to represent them in several suits brought against them in their personal capacity. For both appointments, appropriate letters of appointment or undertaking were issued *circa* 2005 (letters of appointment). The existence of the letters of appointment is not disputed.

[3] By letter dated 22 March 2011, the appellants discharged the respondent with immediate effect. The letter of discharge or termination of services reads as follows:

> **Re: Conduct of matter concerning Lim Yee Teck Realty, Patent View Development, the Estates of Lim Yee Teck and Tan Geok Lan and all other matters concerning and involving the Lim Family**
>
> The above matter refers.
>
> It is regretful that despite us giving you specific instruction to file the committal proceedings against the other shareholders, you have failed to act as instructed and therefore resulting in considerable delay on our part.
>
> We therefore have no other alternative but to discharge your firm from acting as our solicitors with immediate effect.

[4] By letter dated 4 April 2011, the appellants' new solicitors, Culaz & Associates, informed the respondent that he had received instructions from the appellants to continue handling the "matters involving Lim Kien Seng, Lim Kian Peet and Patent View Development Sdn Bhd":

> …
>
> In order to expedite our representation, we enclose herewith our first Notice of Change of Solicitors for Suit No. D7-26-9-2006.
>
> In the meantime, we would appreciate if you could let us have a list of pending matters and dates both in the High Court and the Court of Appeal to enable us to cross refer with our clients' records.
>
> As regards to your balance of fees and costs, we have been instructed by our clients to request from you the final account of fees paid to date and the balance payable for their verification. (emphasis added)

[5] At the time of termination, there were outstanding legal fees which the respondent claimed the appellants had agreed to pay under the letters of appointment. On 19 October 2011, the respondent issued a summary of bills. Upon receipt of the same, the appellants *vide* their new solicitors, Messrs. Culaz & Associates requested the respondent to provide detailed bills on the work undertaken on behalf of the appellants and/or the same to be taxed.

[6] The respondent duly complied *vide* letter dated 16 March 2012, providing pro forma invoices for their legal fees, costs and expenses incurred as solicitor and counsel for the legal work done till the date of termination of services.

[7] The appellants disputed both the principle and the quantum of costs charged by the respondent *vide* their new solicitors' letter dated 2 April 2012. In that same letter, the appellants sought the respondent's consent to have the bill taxed under s. 126(3) of the Legal Profession Act 1976. Under s. 126(3), consent negates the necessity of obtaining an order of court for the purpose of taxation conducted by the Registrar of the High Court, and this is specifically mentioned in the appellants' solicitors' letter.

[8] On 21 November 2016, the respondent filed before the High Court by way of an originating summons, the subject matter in the present appeal, seeking an order under ss. 124, 125 and 126 of the Legal Profession Act 1976 that his bill of costs be taxed on a solicitor and client basis for the cases listed therein (OS), at the behest of the appellants. The list comprised a total of 38 cases undertaken by the respondent for and on behalf of Patent View at the High Court and the Magistrates' Court. The OS was brought against the appellants as well as Patent View.

[9] The application was opposed on the basis that the respondent's claim for his fees is time-barred under s. 6 of the Limitation Act 1953. Relying on the High Court decision of *Abbas & Ngan v. Affin Bank Berhad* [2010] 1 LNS 1082, the appellants had argued at the High Court that looking at the respondent's proposed bill of costs, the conclusion date for each case handled was stated. The last date being 23 October 2010. Since limitation runs six years from the date of cause of action, that six year period must run from the last concluded date of 23 October 2010 in which case, limitation set in on 22 October 2016. As the OS was filed on 21 November 2016, the respondent's application was said to be statute barred and must be dismissed.

[10] The High Court disagreed. The appeal before us is only brought by the directors of Patent View; Patent View itself which has since gone into liquidation did not appeal. This complaint, that the OS is time-barred is maintained in the appeal before us, in fact, it forms the appellants' primary ground of appeal.

[11] The learned judge did not find the claim statute barred under s. 6 of the Limitation Act 1953. According to the learned judge, the underlying relationship between the respondent and the appellants was contractual, governed by the two letters issued by the appellants in 2005, appointing the respondent as the company's and also as their solicitors.

[12] In the first letter of appointment sent in 2005, the appellants, as directors of Patent View signed off on the following contents:

Re: Legal Fees and Costs due to yourselves for representing Patent View Development Sdn Bhd (the Company)

We the undersigned Directors hereby refer to the above matter.

We hereby confirm our meeting between your Mr. K. Mano and Mr. James Culaz and us as Directors of the Company that the Company undertakes and guarantees the payments of your legal fees, disbursements and costs with regard to your firm representing the Company in all legal proceedings wherein the Company is involved including Kuala Lumpur High Court Civil Suit No. D3-26-5-2002 wherein the Company is named as the 5th Respondent.

It was further agreed between your Mr. K Mano and Mr. James Culaz and ourselves as Directors that the Legal Fees and Costs to be paid to your firm M/S K. Mano & Associates shall be equivalent to twenty per cent (20%) of the total value of the assets of the Company and the same shall be paid by the Company upon the disposal of the aforesaid matters and/or the disposal of the assets of the Company whichever is the earlier (hereinafter referred to as "the said Fees") notwithstanding, the predetermination of the services of your firm by ourselves.

In the event the Company is unable to pay the said outstanding fees due and owed to your firm than in such event we as the Directors hereby jointly and severally, and expressly undertake and guarantee the payment of the said Fees to your firm upon discharge and disposal of the matters and/or the assets of the Company whichever is the earlier.

[13] In the second letter also sent *circa* 2005, the same appellants wrote as follows:

Re: Appointment Of Your Firm As Solicitors For The Following Matters

(A) Estates Of Lee Yee Teck & Tan Geok Lian

1. Kuala Lumpur High Court Suit No. D4-22-4600-98
2. Kuala Lumpur High Court Suit No. D3-22-1995-98
3. Kuala Lumpur High Court Suit No. S4-22-852-05
4. Kuala Lumpur High Court Suit No. S6-22-853-05
5. Kuala Lumpur High Court Suit No. D8-24-219-05

(B) Petitions In Respect Of Lim Yee Teck Realty Sdn Bhd

1. Kuala Lumpur High Originating Petition No. D2-26-37-05
2. Kuala Lumpur High Court Winding Up Petition No. D2-28-420-05

(C) Kuala Lumpur High Court Originating Petition No. D3-26-5-02

(D) Kuala Lumpur High Court Winding Up Petition No. D2-28-309-05

> We the abovenamed and undersigned hereby confirm as per our meeting that we undertake and guarantee the payment of all Legal Fees and Costs due and owed to your firm Messrs. K. Mano & Associates of No. 3A, Jalan Yong Shook Lin, 46050 Petaling Jaya, Selangor particulars whereof are set out hereinafter for representing us in the aforesaid legal proceedings and the said Fees shall be inclusive of all Consultation charges for the said matters but excluding disbursements and out of pocket expenses.
>
> We hereby further confirm that it is hereby expressly agreed between us that the Legal Fees and Costs to be paid to your firm shall be equivalent to fifteen per cent (15%) of the total value of our collective individual entitlement of 1/8 shares as beneficiaries from the estate of our late father Lim Yee Teck and late mother Tan Geok Lan (hereinafter referred to as the said Fees).
>
> We further undertake and guarantee the payment of the said Fees upon disposal of all aforesaid matters including other matters related to the issues but not specifically set out and/or upon the extraction of the Letters of Administration notwithstanding, the predetermination of the services of your firm by ourselves.
>
> This undertaking shall be binding on our successors in title, nominee(s), heirs and/or assigns and/or next of kin.

[14] Since the appeal is brought by the appellants and not by Patent View, it is the second letter of appointment which would be most relevant, although the earlier letter of appointment is by no means irrelevant or would be disregarded.

[15] The learned judge distinguished the facts in *Abbas & Ngan (supra)*, finding that there was only one bill issued at the time of completion of services rendered by the solicitor in that case as compared to the present case where it was unclear if all the works had been completed. Amongst the reasons for that conclusion was the appellants' own letter dated 4 April 2011 which "clearly shows that the solicitors have been appointed to 'continue handling the aforesaid matters'"; a request from the appellants for a list of pending matters and dates of cases in the High Court and the Court of Appeal; the terms of the letter of undertaking of 2005 where the respondent was instructed to deal with "matters related to the issues but not specifically set out"; the notice of change of solicitors for Originating Petition No. D7-26-9-2006 which indicated to the learned judge that "some of the cases have not been concluded".

[16] Further, unlike the decision in *Abbas & Ngan (supra)*, there is termination as opposed to simple completion of services rendered; and the appellants had agreed that there were payments of some professional fees still pending.

[17] Applying the Federal Court decision in *Nasri v. Mesah* [1970] 1 LNS 85; [1971] 1 MLJ 32, the High Court held that for purposes of limitation, in claims founded in contract, time runs from the breach. According to the learned judge, the contractual arrangement between the parties is that the respondent was to be paid his legal fees upon the disposal of the legal matters identified, including other matters related to the issues. Under the terms of the 2005 letters of appointment, that would be "upon disposal of the legal matters and/or the disposal of the company assets, whichever is earlier".

[18] The learned judge found that with the termination of the respondent's services, the cause of action accrued from the breach of contract, namely the termination of the contract without full payment of the respondent's professional fees.

[19] We fully agree with the reasoning of the learned judge. The underlying relationship between the parties is necessarily contractual for the rendering of professional legal services. The decision of the Federal Court in *Gurubarchan Singh Bagawan Singh & Ors v. Vellasamy Pennusamy & Other Appeals* [2015] 1 CLJ 719 in fact fortifies this reasoning.

[20] In the present appeal, the two letters of appointment issued by the appellants in 2005 clearly confirm this understanding with the appellants standing as guarantors to the promise to pay for the legal fees, disbursements and costs incurred in representing not only Patent View but also the appellants themselves who were sued in their personal capacities in the legal proceedings that were identified. More pertinent is the promise to pay and a guarantee of payment of such fees and costs upon disposal of all aforesaid matters including other matters related to the issues but not specifically set out and/or upon the extraction of the letters of administration [under the second letter of appointment]; and upon the disposal of the aforesaid matters and/or disposal of the assets of Patent View, whichever is earlier (under the first letter of appointment). In both cases, this promise and guarantee stands notwithstanding the predetermination of the respondent's services by the appellants.

[21] Before us, learned counsel for the appellants contended that all 31 matters handled by the respondent have already been completed or disposed of, most of them in October 2010 while the letters of administration was extracted on 11 April 2008. The decisions of *Coburn v. Colledge* [1897] QB 702 and *Preston v. Nikolaidis* [2017] NSWSC 1527 were cited in support. The OS filed in 2016 was thus time barred.

[22] For similar reasons as explained by the learned judge when distinguishing with the decision in *Abbas & Ngan (supra)*, the reasoning of which we agree, the same may be said about the cases relied on by the appellants. Like the circumstances in *Abbas & Ngan (supra)*, the solicitor's

tasks in *Coburn v. Colledge* had been completed after which the solicitor billed his client. In *Preston v. Nikolaidis*, there was no request for the bill to be taxed nor was there any taxation regime pursuant to specific legislation under consideration. That was a case where the client, Preston, took an anticipatory move of seeking a declaration that the solicitor's entitlement to costs for services rendered was extinguished by the operation of ss. 14 and 63 of the Limitation Act 1969. These cases, with respect, are not of assistance.

[23] In the present appeal, the learned judge found that there was no evidence as to the status of either the disposal of the matters or the disposal of other matters related to the issues in the identified legal proceedings, the appellants' assertion that time had set in simply could not hold. In fact, there is evidence to the contrary showing that there were not only matters pending but that the respondent was instructed to act for the appellants in far more matters than those originally listed in the letter of appointment.

[24] From Culaz & Associates' letter dated 4 April 2011, it is clear that the appellants' own new solicitors, Culaz & Associates acknowledged that the matters that the respondent was instructed to represent the appellants and handle on their behalf were still pending or not completed. In that same letter, it was plainly stated that the "first notice of change of solicitors for Suit No: D7-26-9-2006", pointing very clearly to the first of more to come of such notices of change of solicitors. Such notices would not be required if the matters had already been concluded or disposed of, as per terms of the letters of appointment. Seeking a list of pending cases and dates at the High Court and the Court of Appeal so that the new solicitors could take over and cross refer with the appellants further confirm this conclusion.

[25] On the matter of payment of his fees and costs, Culaz & Associates also informed the respondent in that same letter that "… we have been instructed by our clients to request from you the final account of fees paid to date and the balance payable for their verification". The issue of time bar was not raised, not until the OS was filed, lending credence to the argument that it is more in the nature of an afterthought.

[26] We find the reasoning of the learned judge justified and well-grounded on facts, much of which emanated from the appellants themselves. There is, therefore, no basis to intervene in this appeal.

[27] In any event, we agree with learned counsel for the respondent's argument that since the parties had agreed that the legal fees and costs to be paid to the respondent "shall be the sum equivalent to fifteen per cent (15%) of the total value of our collective individual entitlement of 1/8 shares as beneficiaries from the estate of our late father Lim Yee Teck and late mother Tan Geok Lan", such fees and costs will be obviously dependent on the disposal of the assets of the parents' estate. There is no evidence of such disposal.

[28] It was further argued by the respondent that time bar cannot operate in view of s. 26 of the Limitation Act 1953, relying on the decision of the English Court of Appeal in *Phillips & Co v. Bath Housing Co-Op Ltd* [2013] 2 All ER 475 in this regard. In this case, the solicitor sent his bills to his client who responded with shock at the amount charged by the solicitor, exclaiming that the amount was much higher than was anticipated or budgeted for. The Court of Appeal held that a solicitor's claim for his fees was a debt that was not quantified until agreement by the client, assessment through taxation or subject matter of a judgment, that the letter questioning the amount or quantum was actually an acknowledgement of the existence of a debt that prevented time bar from setting in.

[29] Given that the OS was filed at the behest of the appellants [the appellants had asked the respondent to have his bills taxed, amounting to an acknowledgment of the debt], it is arguable that the OS is not time barred by reason of this acknowledgment. Time, for the purpose of the Limitation Act 1953, runs only from the date when the appellants asked for detailed bill of costs to be taxed, that is, on 2 April 2012. Under such circumstances and for this added reason, the OS is not time barred.

[30] The appellants had also raised their objections under s. 126 of the Legal Profession Act 1976 – that the respondent was in any event out of time in applying for the taxation of their bill. This was relied on at the High Court and is also canvassed in this appeal.

[31] Under s. 126, an advocate and solicitor may apply for the taxation of the bill after the expiration of one calendar month, and within a year from the delivery of the bill of costs. The respondent is said to be well outside these permitted timelines:

> **126. An order for taxation of costs to be made within 6 months of delivery of bill of costs**
>
> (1) An order for the taxation of a bill delivered by any advocate and solicitor may be obtained by a petition as a matter of course by the party chargeable therewith, or by any person liable to pay the cost either to the party chargeable or to the advocate and solicitor, at any time within six months from the delivery of the bill, or, by the advocate and solicitor after the expiration of one calendar month, and within a year from, the delivery.

[32] It was argued by the appellants that since the respondent had delivered the bill to the appellants on 16 March 2012, the application filed on 21 November 2016 was time-barred by virtue of s. 126(1).

[33] The learned judge disagreed, reasoning that actually s. 126(3) was applicable to the factual matrix of the case and not, s. 126(1). Section 126(3) reads:

> (3) In any other cases where an advocate and solicitor and his client consent to taxation of a solicitor's bill the Registrar may proceed to tax the bill notwithstanding that there is no order therefor.

[34] Section 126(1) applies where the parties cannot agree to the amount(s) billed. Where there is consent, s. 126(3) provides that the Registrar then just proceeds to tax the bill even though there is no order to that effect.

[35] If one were to look back at the appellants' letter dated 2 April 2012 sent by their new solicitors, it will be readily appreciated that the appellants had sought or requested the respondent for his consent under s. 126(3). Since the appellants have themselves agreed to taxation of the bill under s. 126(3), we agree with the learned judge that they are now estopped from resiling from that position, objecting to the respondent's application by insisting that s. 126(1) applies instead and that the OS is time-barred.

[36] The Federal Court in *Lai Yoke Ngan & Anor v. Chin Teck Kwee & Anor* [1997] 3 CLJ 305; [1997] 2 MLJ 565 had held that in the context of litigation, if a party by his words or conduct elects to pursue one of two alternative and mutually exclusive courses that were open or available "and thereby leads his opponent to believe that he has abandoned the other, he may, if the circumstances so warrant, be precluded from later changing course." By its letter dated 2 April 2012, the appellants had sought and the respondent had given its consent to tax the bill under s. 126(3). Thus, we agree with the findings of the learned judge that the appellants were estopped from objecting after having elected to pursue the matter under s. 126(3) of the Legal Profession Act 1976.

[37] For all the reasons elucidated above, we agree with and affirm the decision reached by Her Ladyship. The appeal is therefore dismissed with costs.